United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

1-4-78

77-6155

B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL M. KAYNARD, REGIONAL DIRECTOR OF REGION 29 OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD

Petitioner-Appellant,

v.

LOCAL 282, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent-Appellee.

UNITED STATES COURT OF APPEALS
FILED
JAN 4 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

BRIEF FOR RESPONDENT-APPELLEE

O'CONNOR, QUINLAN & MANGAN, P.C.
Attorneys for Respondent-Appellee
29-27 41st Avenue
Long Island City, New York 11101
(212) 361-7950

Of Counsel:

J. Warren Mangan, Esq.

INDEX

Page

I. STATEMENT OF THE CASE..... 1

II. STATEMENT OF FACTS..... 2

III. ARGUMENT.....

A. The Regional Director Failed to Show The Court Below Reasonable Cause to Believe that a Violation of Section 8(b)(4)(B) Occurred..... 7

B. The Regional Director Failed to Show The Court Below Reasonable Cause to Believe that a Violation of Section 8(b)(4)(D) Occurred..... 14

IV. CONCLUSION..... 19

AUTHORITIES CITED

Cases:

Danielson v. Joint Board of Coat, Suit & Allied Garment Workers Union, I.L.G.W.U. 494 F. 2d 1230, 1244 (C.A. 2, 1974)..... 13, 14

Local 26, I.L.G.W.U. (American Plant Protection Inc.) 210 NLRB No. 79 (1974)..... 15

Local 282, I.B.T. (Active Fire Sprinkler Corp.) 233 NLRB No. 166 (December 14, 1977)..... 16, 18

Local No. 282, I.B.T. (D. Fortunato, Inc.) 17 NLRB 673 (1972)..... 11

Local Union No. 438, etc. & Geo. Koch Sons, Inc. 201 NLRB 59 at 64..... 13

Local 982, I.B.T. (Barker Trucking Co.) 181 NLRB No. 67 (1970)..... 17

Local 1976, United Brotherhood of Carpenters v. NLRB (Sand Door) 357 U.S. 93 (1958)..... 8

Page

NLRB v. Enterprise Association & General Pipefitters Local 638
429 U.S. 507 (1977)..... 8

NLRB v. Plumbers, Local 638
429 U.S. 507(1977)..... 8, 10

National Maritime Union of America, AFL-CIO (Puerto Rican Marine Management, Inc.)
227 NLRB No. 155 (1977)..... 15

National Woodwork Mfrs. Ass'n v. NLRB
386 U.S. 612 (1967)..... 8, 15

Printing Pressmen's Union (Metropolitan Printing Co.)
209 NLRB 320 (1974)..... 15

BRIEF FOR RESPONDENT-APPELLEE

I. STATEMENT OF THE CASE

On June 29, 1977 Active Fire Sprinkler Corp. ("Active") filed unfair labor practices with the Twenty-Ninth Regional Office of the National Labor Relations Board ("Board') alleging that Local 282 was violating Sections 8(b)(4)(i)(ii)(B) and (D) of the National Labor Relations Act, as amended ("Act"), 29 U.S.C. 158 (b)(4)(i)(ii)(B) and (D). The Regional Director issued a complaint on those charges pursuant to Section 10(1) of the Act. The Regional Director filed a petition for temporary injunctive relief pending final disposition by the Board of the unfair labor practices charges.

On July 20, 1977, the District Court conducted an evidentiary hearing on the Board's petition for injunctive relief. On August 1, 1977, Judge Jack B. Weinstein of the United States District Court for the Eastern District granted, in part, and denied, in part, the Board's petition for said injunctive relief. The Board filed a Notice of Appeal on December 16, 1977, insofar as the District Court's Order (1) failed to find reasonable cause to believe that Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 282") was engaging in conduct violative of Section 8(b)(4)(B) of the Act, (2) improperly limited the scope of the

injunction prohibiting conduct violative of Section (8)(b)(4)(i)(ii)(D) of the Act, and (3) impermissibly directed the consignment of the disputed work.

II. STATEMENT OF FACTS

Local 282 and John T. Brady & Co. ("Brady") are signatories to a collective bargaining agreement (1975-1978 High-Rise Contract) negotiated by Local 282 and the Building Trade Employers Association of the City of New York ("Association") (A. 235).[1/] Section 9 of the High-Rise Contract provides:

> "SECTION 9. It is the intent of this Agreement that to the maximum extent legally permissible:
> 1. All present work in the bargaining unit shall be preserved;
> 2. All work previously in the bargaining unit which is no longer in the bargaining unit shall be recaptured;
> 3. All work which is fairly claimable for the bargaining unit shall be covered by the Agreement. In view of the different situations affecting individual employers covered by this Agreement, it is understood that the specific application of the above intent to each employer shall be in accordance with the following principles:
> 1. The driving of all trucks owned, operated or under control of the Employer shall be performed by employees of the Employer and covered by this Agreement. The Union will not claim jurisdiction over station wagons, pick-up trucks, light panel trucks, to the extent that such vehicles that are driven by executives, administrative staff, field supervisors, foremen, field engineers, watchmen, timekeepers, checkers, cost engineers,

---

1/ "A." refers to the Joint Appendix. The page reference is within the Joint Appendix.

who use such vehicles for personal transportation and transportation of personal property and their hand tools only. The Union will not claim jurisdiction over those vehicles which are driven by mechanics and skilled tradesmen incidental to the trade itself with their hand tools of their trade only. In no event will men, material or equipment be transported in such vehicles.

2. The driving of all trucks at the site of construction in connection with work which the Employer is contracted to be responsible for, manage or perform, shall be performed by employees of the Employer and covered by this Agreement, provided that the Employer may contract or subcontract said work only to an employer or person who is party to or bound by this agreement, regardless of past practice and custom. This section shall not apply to the driving of a truck entering or leaving the site of construction for the sole purpose of making a single delivery and/or single pick-up from the construction site of materials, tools or personnel, provided such single delivery and/or pick up may be made only to (or from) a single location per delivery or pick up on the site. A truck making a single delivery to single location may make a single pick up from a separate single location.

The Employer will not accept a contract to be responsible for, manage (as defined in Section 8), or perform any work which excludes on-site trucking from its scope. The provisions of this Agreement re on-site trucking shall be made a condition of any supply contract, and any contract or subcontract awarded or "managed" by the Employer covered by this Agreement.

If, notwithstanding the above, any other Unic claims jurisdiction over any work required b this Agreement to be performed by employee covered by this Agreement, Local 282 will proceed diligently to process the dispute through the New York Plan; pending final resolution of the dispute, the Employer shall assign an employee covered by this Agreement to perform the work in question, whether or not any contractor or subcontractor refuses to comply with its obligations."

Brady is the general contractor on behalf of the U.S. Postal Service for the building of a mail facility at John F. Kennedy Airport ("JFK"). Brady sub-contracted the plumbing and fire protection work at JFK to Active. Active brought two jeep style trucks to the construction site to transfer pipes, tools, materials, as well as plumbers from location to location within the jobsite. Active was a signatory to a collective bargaining agreement with Local Union No. 1 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada ("Local 1"). Active had ten (10) plumbers employed at JFK. Its materials were brought to the jobsite by both independent carriers and its own truck drivers. Active's truck drivers were represented by Local 918, I.B.T. and Active had a collective bargaining agreement with that labor organization. The Active jeep trucks were operated by Local 1 plumbers on the jobsite.

The jobsite has 22 locations, over approximately a one-half mile area, where plumbing work was being performed (A. 49). The lengths of pipe carried by the jeep style trucks weighed up to 500 lbs. each. There is a shanty within the jobsite where materials used by subcontractors, including Active, were stored before installation. The jeep trucks transported Active's materials, including 9' lengths of pipe, from the shanty to one or more of the 22 installation locations (A. 48-49).

Mr. Edward McFarland, a Business Agent for Local 282, spoke to Louis Ferrari, Brady's General Superintendent, on May 21, 1977. He said that Brady had a contractual obligation to assign its own drivers, covered by the High-Rise Contract, to perform on-site trucking (A. 56). McFarland told Ferrari that a Brady driver must be put to work to perform Active's on-site movement of materials, tools or personnel (A. 72-74). Daily, between May 21, 1977 and June 15, 1977, a Local 282 representative asked Ferrari when Brady was going to put one of its drivers to work to perform Active's on-site trucking (A. 74). Between May 22, 1977 and June 15, 1977 a Local 282 driver did appear for work every day at JFK, but Brady never assigned him to perform said on-site trucking.

On June 15, 1977, Ferrari got a telegram from the Joint Trade Board notifying Brady to appear before it on June 16, 1977, because of its violation of Section 9 of the High-Rise Agreement. 2/ Brady and Local 282 appeared before the Joint Trade Board and its decision was that Brady was responsible for the on-site trucking and that Brady's allowance of Active to perform the work was in violation of the High-Rise Contract (A. 74-76).

2/ The Joint Trade Board hears all complaint, disputes and differences arising under the High-Rise Contract. If the Joint Trade Board fails to reach a decision the matter is referred to an impartial umpire. A decision by the Joint Trade Board is final and binding. See Section 13 of the High-Rise Contract.

When Ferrari got back to JFK on June 16, 1977, he found pickets there. The legends on the picket signs read "John T. Brady Unfair to Local 282" (A. 77). Ferrari discussed this dispute with other persons in Brady's management and their decision was to pay 17 days back pay to the Local 282 shaper and to perform Active's on-site trucking with its own employee thereafter (A. 77). That decision was communicated to Local 282 and the picketing ceased (A. 78). On June 17, 1977, Brady sent a letter to Active outlining the problem that existed between Local 282 and itself (A. 78, 211). On June 24, 1977, Ferrari received a call from Robert Sasso, Secretary-Treasurer of Local 282. Sasso told Ferrari that he wanted a Brady driver, covered by the High-Rise Contract, performing Active's on-site trucking by June 27, 1977 or Local 282 was going on strike (A. 80-81). Ferrari told Sasso that he had to discuss this matter with another person (name of that person was undisclosed) and requested that Local 282 take no strike action until June 29, 1977 (A. 81). On June 27, 1977 Brady filed a charge with the Twenty-ninth Regional Office of the Board and on June 28, Local 282 went on strike (A. 82-83). On June 28, 1977 there were Local 282 pickets at the main gate to the JFK jobsite. The picket signs read "John T. Brady Unfair to Local 282".[3/]

3/ During the period between June 16th and June 24th Brady permitted Active to continue its on-site trucking dispite the Joint Trade Board's decision.

On June 30, 1977, Ferrari advised Active that its plumbing work at JFK was immediately suspended, pursuant to Article 8, paragraph 2 of the Brady-Active subcontract agreement (A. 221).

III. ARGUMENT

A. THE REGIONAL DIRECTOR FAILED TO SHOW THE COURT BELOW REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF SECTION 8 (B)(4)(B) OCCURRED

The essence of the Board's argument on this appeal is that Section 10(1), 29 U.S.C. 160(1)[4/] injunction should have been issued against Local 282 because it picketed Brady when its

---

4/ Insofar as pertinent, Section 10(1) provides as follows:

> Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 8(A), (B), or (C) of Section 8(b), or Section 8(e), or Section 8 (b)(7) the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or the regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law:
> ***Upon filing of any such petition the court shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony:***

(CONTINUED)

remedy to perserve work opportunity for Brady's employees was limited to a lawsuit. The Board's understanding of the applicable law is incorrect.

In NLRB v. Enterprise Association & General Pipefitters Local 638, 429 U.S. 507 (1977), the Supreme Court fully explained its prior decisions in Local 1976, United Brotherhood of Carpenters v. NLRB (Sand Door)[5/] and National Woodwork Mfrs. Ass'n v. NLRB.[6/] The majority opinion in NLRB v. Plumbers, Local 638 concluded that the Court's decisions in each of the above cases reflected a consistent interpretation of what union activity violated Section

---

4/ (CONTINUED)

In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to Section 8(b)(4)(D).

5/ 357 U.S. 93 (1958).

6/ 386 U.S. 612 (1967).

8(b)(4)(B) of the Act.[7] The Court stated that neither Section 8(b)(4)(B) nor Section 8(e)[8] forbids primary activity to preserve traditional work. The question that must be resolved in each 8(b)(4)(B) case of this type is whether, with or without any provision contained in the labor agreement, the union's conduct, at the time that it occurred, was proscribed secondary activity.

7/ Section 8(b)(4)(B) provides that it shall be an unfair labor practice for a labor organization or its agents -

* * * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is -

* * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

8/ Section 8(e), 29 U.S.C. Section 158(e) states as follows:

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, expressed or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or here-

 (CONTINUED)

If it was then the contractual provision doesn't save it. If it was not secondary, then 8(b)(4)(B) does not reach it. Thus, the Board's seemingly mechanical conclusion that the Regional Director is entitled to a Section 10(1) injunction whenever a district court is shown that a union has exerted economic pressure against a signatory employer, to enforce a valid work preservation objective, is incorrect.

The finding of an 8(b)(4)(B) violation in NLRB v. Plumbers, Local 638 was due to the fact that the signatory employer was incapable of assigning the disputed work to its employees. The union's object in exerting pressure on the signatory employer (a subcontractor) was to force a change in the general contractor's manner of doing business and, therefore, was secondary. In that situation the valid work preservation provision in the union - subcontractor labor agreement did not save the union from a violation of 8(b)(4)(B) when the union refused to install work which, concededly, the subcontractor had contractually agreed not to furnish to its employees for installation. The Supreme Court held that under these circumstances the union's only recourse against the signatory employer, to enforce its valid work preservation clause, is through a lawsuit or other similar means.

8/ (CONTINUED)
after containing such an agreement shall be to such extent unenforcible and void: Provided, That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work...(emphasis added).

The Supreme Court did not hold, however, that a union may not exert economic pressure against a signatory employer to protect the legitimate economic interests of that employer's workers to preserve their work opportunity. Where, under all the surrounding circumstances, the union's objective is work preservation and the signatory employer has the control necessary to resolve the dispute, the union's lawful recourse is not limited to a judicial remedy.

The instant labor dispute is between a general contractor, Brady, and its signatory union, Local 282. It concerns only the on-site trucking of supplies and materials from one point on the JFK site to another.[9/] The on-site work preservation provision contained in Paragraph 2, Section 9 of the High-Rise Contract represents a subsequently negotiated by product of the Board's decision in Local Union No. 282, I.B.T. (D. Fortunato, Inc.), 197 NLRB 673 (1972). The record evidence in the Fortunato case clearly showed Local 282's traditional performance of on-site driving for all the trades performing subcontracting work. This traditional work includes the movement of all supplies and materials from a designated on-site dumping or warehouse location to the ultimate location, within the site, where the supplies and materials are installed. Following the Fortunato decision Local 282 and the

---

9/ (A. 109-110, 113, 156).

authorized contractors associations revised the scope of the work preservation provision contained in the 1969-1972 High Rise Contract. The amended provision was carefully limited to comply with the construction proviso contained in Section 8(e)[10/] and has been contained in both the 1972-1975 and 1975-1978 High Rise Contracts.

As the general contractor at the JFK jobsite, Brady directed the operations of the various subcontractors, including, Active. The subcontracting agreement between Brady and Active gave Brady the power to terminate their subcontract agreement if necessary to preserve harmonious labor relations on the jobsite (A. 222).[11/] Pursuant to Section 9, Paragraph 2 of the High-Rise Contract, Brady agreed to perform on-site trucking with its own employees or to subcontract that work to an employer signatory to the prevaling High-Rise Contract, regardless to past practice or custom.[12/]

In view of the fact that Active was not a signatory to the High-Rise Contract and Brady was permitting Active to perform on-site trucking with its own employees, Local 282's economic

---

10/ No charge was filed with the Board challenging Section 9 of the High-Rise Contract under Section 8(e) of the Act. Accordingly, the Board's assertions that the contractual provision is in violation of Section 8(e) is both inaccurate and misplaced. This Court must, for the purposes of this proceeding, accept that Section 9 is both primary and has a lawful object.

11/ Article XIX of the Brady-Active Subcontract Agreement.

12/ As provided for in the construction proviso to Section 8(e) of the Act.

pressure against Brady was indisputably to protect and preserve work opportunity for Brady's employees "regardless of past practice or custom". Brady possessed the necessary control to resolve this on-site dispute and, therefore, cannot be viewed as anything but an offending employer ineligible for the protection of Section 8(b)(4)(B). Local Union No. 438, etc. and George Koch Sons, Inc., 201 NLRB 59, at 64.[13/] There was no evidence introduced before the district court that could reasonably be interpreted as a demand by Local 282 that Active be forced or required off the jobsite, and/or that Brady cease doing business with Active (A. 108-109).

The factssubmitted to Judge Weinstein, failed to show "some significant possibility that the Board will enter an enforceable order" [Emphasis added] , Danielson v. Joint Board of Coat, Suit & Allied Garment Worker's Union, I.L.G.W.U., 494 F. 2d 1230, 1244 (C.A. 2, 1974). The Second Circuit has recognized that district courts should not serve merely as a "rubber stamp" for the Regional Director. This Court has rejected the position that the district court is bound under 10(1) to issue an injunction unless it is willing to characterize the Regional Director's contentions as insubstantial and frivolous. On the contrary, this Court held that "that when, after full study, the district court is convinced that the [Regional Director's] legal position is wrong,...it should

13/ In the Board's brief, page 11, there is a mistaken reference to a 1971 Memorandum of Understanding which, on its face, was an interim document that has no application to the work in dispute this jobsite or to employers, like Brady, who were and continue to be signatories to a Local 282 labor agreement.

not issue an injunction under Section 10(1)." Id. at 1245.

Although it may be said that the Regional Director's determination that Local 282's purpose in picketing Brady is a question of fact, this Court has stated in Danielson v. Joint Board, supra, 494 F. 2d at 1245, that the Regional Director's factual determination must be "within the range of rationaltiy" or based upon inferences which are "fairly drawn". In the instant case the Regional Director has contended that any picketing of Brady by Local 282, to preserve work opportunity for Brady's employees, is violative of 8(b)(4)(B) of the Act. Indeed, such a determination is not only incorrect, as a matter of law, but, also, upon the evidence submitted to the district court, it does not meet this Court's test for issuance of a 10(1) injunction.

B. THE REGIONAL DIRECTOR FAILED TO SHOW THE COURT BELOW REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF SECTION 8(b)(4)(D) OCCURRED

The Board contends, on this appeal, that the scope of the district court's order finding reasonable cause to believe that Local 282 violated 8(b)(4)(D) of the Act, was too narrow.[14/]

14/ Section 8(b)(4)(D) of the Act, provides:
8(b) It shall be an unfair labor practice for a labor organization or its agents -
* * *
(4)(i) to engage, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to...perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object there of is:
* * *

(CONTINUED)

Local 282, on the other hand, has repeatedly contended that its action against Brady was primary, since the sole object thereof was to protect the legitimate economic interests of Brady's employees to preserve their work opportunity. The prohibition of subsection (D) of 8(b)(4) is against coercion to force an employer to assign work to one of two unions, but only where those pressures are designed to involve that employer in disputes not his own. National Woodwork Mfrs. Ass'n v. NLRB, 386 U.S., at 625.

There is no record evidence upon which one can reasonably conclude otherwise than that Local 282 was seeking to protect work opportunity for Brady's employees. Brady's conduct in permitting Active to perform on-site trucking at the JFK jobsite went beyond the assignment of work to one group of employees rather than another. Because Brady, indirectly, transferred its on-site trucking to plumbers does not, when picketing commences against Brady, turn a primary work preservation dispute into a jurisdictional dispute, subject to 8(b)(4)(D). Printing Pressmen's Union (Metropolitan Printing Co.) 209 NLRB 320 (1974); Local 26, I.L.G.WU. (American Plant Protection, Inc.), 210 NLRB No. 79 (1974) and National Maritime Union of America, AFL-CIO (Puerto Rican Marine

---

14/ (CONTINUED)

> (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work;

Management, Inc.), 227 NLRB No. 155 (1977). Apply jurisdictional dispute principles to this work preservation dispute distorts the statute, and leaves Local 282 in the Catch-22 situation of possessing rights without a remedy.

The district court found the object of Local 282's economic pressure was primary and, therefore, not in violation of 8(b)(4)(B), but jurisdictional and, therefore, probably in violation of 8(b)(4)(D). The incongruity of this result is obvious. While Local 282 lawfully picketed to preserve work opportunity for unit employees, its demand for the transfer of that work to those same unit employees has been viewed by the district court as establishing reasonable cause for finding a violation of 8(b)(4)(D). The district court's issuance of the Section 10(1) injunction cannot have been correct, because if it was the underpinnings of the contruction industry proviso to Section 8(e) would be, effectively, removed.[15/]

15/ The construction exemption in Section 8(e), 29 U.S.C. Section 158(e) provides:
"That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting or repair of the building, structure, or other work..."

It should be noted, however, that the Board's decision in the Section 10(k) proceeding found reasonable cause to believe that Section 8(b)(4)(D) had been violated by Local 282. The Board awarded the disputed work to the plumbers on the dubious basis of Active's testimony regarding the past practice of assigning on-site transportation work to plumbers. Local 282, I.B.T. (Active Fire Sprinkler Corp.), 233 NLRB No. 166 (December 14, 1977). Local 282 has advised the Regional Director that it would not comply with the Board's 10(k) determination. Therefore, the General Counsel will proceed with the Section 8(b)(4)(D) complaint.

The Board, in this proceeding, has completely misrepresented the record testimony, as well as the object of Section 9 of the High-Rise Contract. The district court correctly found that the dispute did "not concern the movement of supplies from outside the jobsite to a single delivery location within the jobsite," but was limited to the carrying of "construction supplies at the J.F.K. site from point to point within the job site." Therefore, there is no basis for the Board to seek or this Court to grant injunctive relief against alleged "unlawful attempts to obtain work presently performed by employees represented by any other labor organization or employees who are unrepresented."[16/]

Local 282 has not sought from Brady or any subcontractor "the work of driving delivery trucks on the job site". Section 9 of the High-Rise Contract does not limit in any way the delivery of materials or supplies to or from the jobsite. It simply restricts the manner of movement of these supplies, etc., within the jobsite. It is solely aimed at preventing suppliers' drivers "from performing any work at the jobsite after the delivery has been completed."[17/]

Again, the thrust of the Board's argument is addressed to Section 9, of the High-Rise Contract rather than the dispute before Judge Weinstein. The Board's attempt to contest the validity of Section 9 on an appeal of the scope of a Section 10(1) injunction, for an alleged violation of 8(b)(4)(D), is misplaced. Especially, since

---

16/ Board's Brief pp. 2-3; 36-37

17/ Local 982, I.BT., (Barker Trucking Co.), 181 NLRB No. 67 (1970). Furthermore, it must be emphasized that there is no Section 8(e) charge pending in this proceeding.

there is no record evidence that the dispute extends to the operation of delivery trucks on the jobsite.[18/]

There is a further reason for denying an expansion of the injunctive relief mistakenly granted by the district court. In addition to ascertaining whether there is "reasonable cause to believe" that there has been a violation of 8(b)(4)(D), the district court had to consider whether injunctive relief was "just and proper". This requirement invokes the traditional equity considerations of the district court. Therefore, any injunctive relief must be premised upon preventing some injury to the charging party, employer, or to the general public. Danielson v. Int. Bro. of Elec. Workers, Local Union 501, 509 F. 2d 1371, 1375 (2d Cir. 1975); Danielson v. Int. Org. of Masters, Mates & Pilots, AFL-CIO, 521 F. 2d 747, 756 (2d Cir. 1975). The Regional Director presented no proof at the evidentiary hearing to warrant the issuance of a Section 10(1) injunction, much less an expansion upon the mistaken relief. Although Local 282 disagrees with the injunctive relief granted by Judge Weinstein, he most certainly focused upon the nature of the dispute and limited his equity power to the scope of the issue before him.

18/ The Board's Section 10(k) decision did award "the work in question" to employees represented by Local 1 and Local 918. Local 282, I.B.T. (Active Fire Sprinkler Corp.), supra.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that there wasn't evidence submitted by the Regional Director establishing reasonable cause to believe that Local 282 violated either Section 8(b)(4)(B) or (D) of the Act. Accordingly, the order of the Court below should be affirmed, except to the extent that it issued any injunctive relief on the Section 8(b)(4)(D) charge. To that extent this Court, in the exercise of its supervisory and equitable judicial powers, should reverse the district court's order and dismiss the petition of the Regional Director.

Respectfully submitted,

O'CONNOR, QUINLAN & MANGAN, P.C.
Attorneys for Respondent-Appellee
29-27 41st Avenue
Long Island City, New York 11101

Of Counsel:

J. Warren Mangan, Esq.

January, 1978